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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,286	11/10/2003	Heiko Malsch	LEAR03822PUSA	4921
34007	7590	08/13/2004	EXAMINER	
BROOKS KUSHMAN P.C. / LEAR CORPORATION 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075-1238			WHITE, RODNEY BARNETT	
		ART UNIT	PAPER NUMBER	3636

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/705,286	MALSCH ET AL.
Examiner	Art Unit	
Rodney B. White	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 April 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 27-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 27-37 and 39-52 is/are rejected.
- 7) Claim(s) 38 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/21/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Drawings*

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: On page 10, line 23, reference number 22 is not in any of the drawings.. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation that the impact panel is formed with decreasing width in the direction of the connection element must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. What exactly is the Applicant trying to define since the "impact panel 12" appears to be rectangular. The "connection element 11" is smaller than the "impact

panel 12" and the "holding device 5" does decrease in width at its bottom, as Fig. 1 shows. So what exactly is the Applicant trying to define in claim 32? Has he identified the correct part as having a decreasing width in claim 32?

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: On page 12, line 1, should “latter” be - - lateral - - instead?

Applicant should read through the Specification and look for other such unclear language or typographical errors. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 42-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 42 and 44 are in alternative form when Applicant provides several “alternatives” in the assembly of the “guide sleeve” by listing several methods and using the word “or. The Applicant appears to be unsure of his invention. He should pick one and stick with that limitation.

The aforementioned problems render the claims vague and indefinite. Clarification and/or corrections is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 27-30, 33-37, and 39-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Humer (U.S. Patent No. 6,604,788).

Humer teaches a head restraint positioning mechanism for the positioning of a head restraint of a vehicle seat particularly in case of a rear-end impact of the vehicle with at least an impact device that has a dynamic connection to the head restraint and that is essentially arranged on a seat back of the vehicle seat in the area of a pelvis of a passenger sitting on the vehicle seat characterized in that the impact device presents at least one constructional unit with pressure-induced

length variation and in that a corresponding length variation of the impact device is convertible into a positioning of the head restraint through the dynamic connection with the head restraint, since damper 118 does lengthen and shorten (See Figures 6-10), characterized in that the dynamic connection between the impact device and head restraint presents at least one guide sleeve for a head restraint rod, characterized in that the dynamic connection between the impact device and head restraint presents at least one holding device particularly for a guide sleeve, wherein a bar-shaped connection element 118 is arranged between the impact device and the holding device, wherein the impact panel has a connection device for the pivoting connection to the connection element at least on an upper end, the connection element having a flat profile, wherein the connection element has an upper pivoting connection device on an upper end (the upper section of the damper 118 and a lower pivoting connection device the bottom section of the damper 118 on a lower end for detachably mounting the connecting device of the impact panel and to an end of a holding device pointing to the connection element, wherein at least one of the pivoting connection devices is formed by clip connection elements, wherein the clip connection element presents at least one bearing shell formed with an essentially semi-circular cross-section, the pivot shaft are the pins running through the pivotal connections of the damper(s). All features in claims 40-52 are evident from observing Figures 6-7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humer in view of Cho (U.S. Patent No. 6,550,865).

Humer teaches the structure substantially as claimed but does not teach that the impact panel is convexly curved in the direction of the passenger. However, Cho teaches the convexly curved impact panel to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the impact panel, as taught by Humer, to include a convexly curved impact panel, as taught by Cho, since it would allow greater and improved contact between the passenger and the impact panel allowing better reaction of and protection by the headrest.

Claim 32, so far as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Humer in view of Fischer et al (U.S. Patent No. 6,565,150).

Humer teaches the structure substantially as claimed but does not teach that the impact panel is formed with decreasing width in the direction of the connection element. However, Fischer et al teaches an impact panel 14 formed with decreasing width from top to bottom in the direction of the connection element to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the impact panel, as

taught by Humer, to include the impact panel is formed with decreasing width in the direction of the connection element., as taught by Fischer et al, since it appears to only be a design choice and since Humer performs the same function and works just as well with a consistent width throughout .

Claim 38 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Humer et al, Choi, Wiklund, Neale, Shah et al, Andersson et al, Wieclawski, Nakano et al, Viano et al, and Klier teach structures similar to the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (703) 308-2276. The examiner can normally be reached on 5:30 AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (703) 308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney B. White,  
Patent Examiner  
Art Unit 3636  
August 11, 2004

  
